



[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG-132529-17]

RIN 1545-BO13

Computation and Reporting of Reserves for Life Insurance Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the computation of life insurance reserves and the change in basis of computing certain reserves of insurance companies. These proposed regulations implement recent legislative changes to the Internal Revenue Code. This document invites comments on these proposed regulations. This document affects entities taxable as insurance companies.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](https://www.regulations.gov) (indicate IRS and REG-132529-17) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send

hard copy submissions to: CC:PA:LPD:PR (REG-132529-17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dan Phillips, (202) 317-6995; concerning submissions of comments and requests for a public hearing, Regina Johnson, (202) 317-5177 or [fdms.database@irs.counsel.treas.gov](mailto:fdms.database@irs.counsel.treas.gov) (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

This document contains proposed amendments to 26 CFR part 1 under sections 807 and 816 of the Internal Revenue Code (Code). Sections 807 and 816 were added to the Code by section 211(a) of the Deficit Reduction Act of 1984, Public Law 98-369, 98 Stat. 494. Section 807 was amended by sections 13513 and 13517 of the Tax Cuts and Jobs Act, Public Law 115-97, 131 Stat. 2054, 2143, 2144 (2017) (TCJA). These amendments by the TCJA apply to taxable years beginning after December 31, 2017.

This document also proposes to amend or remove the following regulations in 26 CFR: §§1.338-11, 1.381(c)(22)-1, 1.801-2, 1.801-5, 1.801-7, 1.801-8, 1.806-4, 1.807-1, 1.809-2, 1.809-5, 1.810-3, 1.817A-0, 1.817A-1, 1.818-2, 1.818-4, 1.848-1, 1.6012-2, and 301.9100-6T. These proposed changes are conforming changes to regulations that (i) relate to repealed or amended law, (ii) reference regulations that are proposed to be removed, (iii) have no future application, or (iv) relate to other regulations proposed by this document.

##### A. Reserves Taken into Account in Determining Life Insurance Company Taxable Income

Section 801(a) imposes a tax on the life insurance company taxable income of every life insurance company. Section 801(b) defines life insurance company taxable income to mean life insurance gross income, reduced by life insurance deductions. Under section 803(a)(2), life insurance gross income includes a net decrease in items described in section 807(c) as required by section 807(a). Under sections 804 and 805(a)(2), life insurance deductions include a deduction for a net increase in items as required by section 807(b).

The items described in section 807(c) are: (i) life insurance reserves (as defined in section 816(b)); (ii) unearned premiums and unpaid losses included in total reserves; (iii) amounts that are discounted at the appropriate rate of interest to satisfy obligations under insurance and annuity contracts that do not involve life, accident, or health contingencies when the computation is made; (iv) dividend accumulations and other amounts held at interest in connection with insurance and annuity contracts; (v) premiums received in advance and liabilities for premium deposit funds; and (vi) reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance that are held for retired lives, premium stabilization, or a combination of both.

**B. Life Insurance Reserves Taken into Account in Determining Premiums Earned for a Nonlife Insurance Company**

Section 831(a) generally imposes a tax on the taxable income of every insurance company other than a life insurance company (a nonlife insurance company). Section 832 defines taxable income for this purpose to be gross income (as defined in section 832(b)(1)) less allowed deductions. Section 832(b)(1) provides that gross income

includes underwriting income, and section 832(b)(3) provides that underwriting income means premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

Under sections 832(b)(4) and 832(b)(7)(A), premiums earned on insurance contracts during the taxable year are reduced by life insurance reserves at the end of the taxable year and increased by life insurance reserves at the end of the preceding taxable year. For this purpose, life insurance reserves are defined in section 816(b) but determined under section 807(d).

### C. Method of Computing Life Insurance Reserves for Purposes of Determining Income

#### 1. Prior to modification by the TCJA

Section 807(d) sets forth rules for computing the amount of life insurance reserves for a contract for purposes of determining life insurance company taxable income and for purposes of computing premiums earned for a nonlife insurance company. Prior to amendment by the TCJA, section 807(d)(1) provided that the amount of the life insurance reserves for any contract was the greater of the net surrender value of the contract (determined under section 807(e)(1)) or the federally prescribed reserve determined under section 807(d)(2). This amount, however, could not exceed the amount that would have been taken into account with respect to the contract in determining statutory reserves (as defined in prior section 807(d)(6)).

Prior section 807(d)(2) provided that the federally prescribed reserve for a contract was computed using (i) the tax reserve method applicable to the contract, (ii) the greater of the applicable Federal interest rate or the prevailing state assumed interest rate, and (iii) the prevailing commissioners' standard tables for mortality and

morbidity, adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract that were not otherwise taken into account.

In the case of a contract to which the Commissioners' Reserve Valuation Method (CRVM) applied (generally, a life insurance contract), prior sections 807(d)(3)(A)(i) and 807(d)(3)(B)(i) provided that the tax reserve method applicable to the contract was the CRVM as prescribed by the National Association of Insurance Commissioners (NAIC) that was in effect on the date the contract was issued. Similarly, in the case of a contract to which the Commissioners' Annuity Reserve Valuation Method (CARVM) applied (generally, an annuity contract), prior sections 807(d)(3)(A)(ii) and 807(d)(3)(B)(ii) provided that the tax reserve method applicable to the contract was the CARVM as prescribed by the NAIC that was in effect on the date the contract was issued. Other parameters, such as the appropriate interest rate and mortality tables, were likewise generally determined with reference to the date the contract was issued.

Section 1.807-1 provided instructions on what mortality and morbidity tables taxpayers should have used to compute life insurance reserves for a contract for which there were no applicable commissioners' standard tables when the contract was issued. Section 1.807-1 was published as a final regulation in the **Federal Register** (54 FR 52933) on December 26, 1989 (T.D. 8278).

## 2. Principle-based reserves and IRS notices

In recent years, the NAIC has promulgated and states have adopted principle-based reserving methods to better reflect the economics of more complex life insurance and annuity products. Principle-based reserves (PBR) are intended to replace a more formulaic approach to determining policy reserves with an approach that takes into

account a range of future economic conditions and more closely reflects the risks of complex insurance products. See, e.g., Principle-Based Reserves for Life Products under the NAIC Valuation Manual, Actuarial Standard of Practice No. 52, Actuarial Standards Board, Sept. 2017, App 1.

Federal income tax issues arose when trying to apply the requirements of prior section 807(d) to tax reserve methods that were PBR methods. It was not clear how aspects of PBR methods fit within the statutory requirements of prior section 807(d). For example, a PBR method may require reserves to be computed based on many different scenarios in which many different interest rate assumptions are made, but prior section 807(d) required the use of a single interest rate when computing the reserve for a contract.

In 2008, the IRS issued Notice 2008-18, 2008-1 C.B. 363, to alert life insurance companies that Federal tax issues might arise as a result of the then-proposed PBR methods, identify areas of concern, and invite comments on these and other issues. Several comments were received and considered.

In 2010, the IRS issued Notice 2010-29, 2010-15 I.R.B. 547, to provide interim guidance to issuers of variable annuity contracts as a result of the adoption by the NAIC of Actuarial Guideline 43 (AG 43), which describes a PBR method. The interim guidance provided, among other things, that (i) for purposes of determining whether an insurance company satisfies the 50 percent of reserves test for qualification as a life insurance company under section 816(a), the Standard Scenario Amount (SSA) determined under AG 43 is included in life insurance reserves as defined in section 816(b) and total reserves as defined in section 816(c), (ii) for purposes of applying the

statutory reserve cap of section 807(d)(1), the term “statutory reserves” under prior section 807(d)(6) (current section 807(d)(4)) includes the SSA, provided the requirements of prior section 807(d)(6) are otherwise met, and (iii) for purposes of determining the amount of the reserve under prior section 807(d)(2) for contracts falling within the scope of AG 43 and issued on or after December 31, 2009, the provisions for determining the SSA are taken into account and the provisions for determining the conditional tail expectation amount (a component of AG 43) are not taken into account.

### 3. Modification by the TCJA

Section 13517 of the TCJA amended section 807(d)(1) to provide generally that, for purposes of determining life insurance company taxable income, the amount of the life insurance reserves for any contract (other than a contract to which section 807(d)(1)(B) applies (relating to variable contracts)), is the greater of the net surrender value of such contract or 92.81 percent of the reserve determined under section 807(d)(2). The amount of the life insurance reserve for a variable contract, as specified in amended section 807(d)(1)(B), is the sum of (i) the greater of the net surrender value of such contract or the portion of the reserve that is separately accounted for under section 817 and (ii) 92.81 percent of the excess (if any) of the reserve determined under section 807(d)(2) over the amount in clause (i).

Section 13517 of the TCJA amended prior section 807(d)(2) to provide that the amount of the reserve under section 807(d)(2) is determined using the tax reserve method applicable to such contract. Section 13517 of the TCJA also amended prior section 807(d)(3) to provide generally that the tax reserve method applicable to a contract is the method prescribed by the NAIC that applies to the contract as of the date

the reserve is determined, not the date the contract was issued, as was required prior to the TCJA.

The TCJA did not change the treatment of asset adequacy reserves. Asset adequacy reserves and similar reserves that address solvency concerns of state regulators but do not meet technical actuarial requirements have long been excluded from life insurance reserves for Federal income tax purposes. See, e.g., Rev. Rul. 67-435, 1967-2C.B. 232; Old Line Insurance Co. v. Commissioner, 13 B.T.A. 758 (1928). The Conference Report to the TCJA states that “[a]s under present law, no deduction for asset adequacy reserves or deficiency reserves is allowed.” H.R. Rep. No. 115-466, at 477 (2017) (Conference Report). See also Staff of the Joint Committee on Taxation, 115th Cong., General Explanation of Public Law 115-97, 235 (Comm. Print 2018) (Bluebook).

Section 13517(c)(3) of the TCJA provided a transition rule that requires any difference between (i) the amount of life insurance reserves with respect to any contract as of the close of the taxable year preceding the first taxable year beginning after December 31, 2017, computed using the method prescribed by the TCJA and (ii) the amount of such reserves computed using the method prior to the amendments by the TCJA, to be taken into account over the eight succeeding taxable years. Rev. Proc. 2019-34, 2019-35 I.R.B. 669, provides simplified procedures for an insurance company to obtain consent of the Commissioner of Internal Revenue or his delegate (Commissioner) to change its method of accounting for life insurance reserves to comply with the amendments to section 807 made by the TCJA.

#### D. Change in Basis of Computing Reserves



1. Prior to modification by the TCJA

a. Statutory provisions

Prior to amendment by the TCJA, section 807(f)(1) provided that if the basis for determining any item described in section 807(c) (for example, life insurance reserves) as of the close of any taxable year differed from the basis for that determination as of the close of the preceding taxable year, then so much of the difference between the amount of the items at the close of the taxable year computed on the new basis and the amount of the item at the close of the taxable year computed on the old basis, as is attributable to contracts issued before the taxable year, was taken into account ratably for each of the succeeding ten taxable years.

Prior section 807(f) was substantially similar to and replaced prior section 810(d) as enacted by the Life Insurance Company Income Tax Act of 1959, Public Law 86-69, 73 Stat. 112 (1959). By enacting prior section 810(d), Congress provided a specific treatment for adjustments resulting from a change in method of computing reserves that otherwise would have been subject to the general tax rules under section 481 for changes in method of accounting. See, e.g., American General Life and Accident Insurance Co. v. United States, 90-1 USTC (CCH) ¶ 50,010 (M.D. Tenn.1989) (section 481 is a more general provision dealing with a broad variety of cases and section 810, on the other hand, is much more specific and deals with a very narrow and limited type of change in method of accounting).

If a company ceases to qualify as a life insurance company, section 807(f)(2), which was not amended by the TCJA, requires, except as provided in section 381(c)(22), that the balance of any adjustment under section 807(f) be taken into

account in the taxable year preceding the taxable year in which the taxpayer no longer qualifies as a life insurance company.

b. Regulatory provisions

Regulations relating to the change in method of computing reserves were adopted under Code provisions that existed prior to their repeal by the Deficit Reduction Act of 1984. If and to the extent the Deficit Reduction Act of 1984 incorporated provisions of prior law, regulations and other guidance generally continued to serve as interpretive guides to the new provisions. H.R. Rep. No. 98-432, pt. 2, at 1401 (1984).

Section 1.801-5(c) provides that if reserves are claimed by a life insurance company then sufficient information must be filed with the return to enable the validation of the claim. Section 1.801-5(c) also requires certain information to be filed if the basis (for Federal income tax purposes) for determining the amount of the life insurance reserves as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year. Section 1.801-5 was published as a final regulation in the **Federal Register** (25 FR 12654) on December 10, 1960 (T.D. 6513).

Section 1.806-4 describes prior section 806(b) and provides that a change in basis of computing any of the items in prior section 810(c) (the predecessor to section 807(c)) is not a change in method of accounting requiring the consent of the Secretary of the Treasury or his delegate (Secretary) under section 446(e). Section 1.806-4 was published as a final regulation in the **Federal Register** (25 FR 12654) on December 10, 1960 (T.D. 6513).

Section 1.810-3 describes how a change in basis of computing the items in prior section 810(c) should have been treated under the Code prior to its amendment by the

Deficit Reduction Act of 1984. Section 1.810-3(a) provides that if the basis for determining an item in prior section 810(c) at the end of a taxable year differs from the basis for such determination at the end of the preceding taxable year, then the difference between the amount of the item computed at the end of the taxable year on the new basis and the amount of the item computed at the end of the taxable year on the old basis is generally taken into account ratably over the 10 succeeding taxable years. Example 1 of §1.810-3(b) illustrates that if there is a change in basis of computing an item described in former section 810(c) during a taxable year, then for purposes of determining any increase or decrease in such item during the taxable year, such increase or decrease is the difference between the amount of such item computed at the beginning of the taxable year on the old basis and the amount of such item computed at the end of the taxable year on the old basis. Section 1.810-3(c) further provides that, subject to section 381(c)(22), if a company ceases to qualify as a life insurance company, the balance of any adjustment resulting from the change in method of computing reserves must be taken into account in the taxable year preceding the taxable year in which the taxpayer no longer qualifies as a life insurance company. Section 1.810-3 was published as a final regulation in the **Federal Register** (25 FR 12654) on December 10, 1960 (T.D. 6513).

Section 1.818-2(c) describes prior sections 806(b) and 810(d)(1). Section 1.818-2 was published as a final regulation in the **Federal Register** (26 FR 2781) on April 4, 1961 (T.D. 6558).

c. IRS guidance

The application of section 807(f) prior to its amendment by the TCJA and the application of prior section 810(d) are illustrated by Rev. Rul. 2002-6, 2002-1 C.B. 460 (inclusion of factors omitted in a previous year's determination of reserves is a change in basis under prior section 807(f) and taxpayer may correct the method on an amended return); Rev. Rul. 94-74, 1994-2 C.B. 157 (applying prior section 807(f) in several situations in which taxpayer changed the basis of computing life insurance reserves); Rev. Rul. 80-117, 1980-1 C.B. 143 (revocation of the election to recompute life insurance reserves under prior section 818(c) of a company acquired in a merger results in a recomputation of the reserves, which is a change in basis of computing the reserves subject to the 10 year spread of prior section 810(d)); Rev. Rul. 80-116, 1980-1 C.B. 141 (recomputation of life insurance reserves under prior section 818(c) of a company acquired in a merger is not a change in basis of computing reserves under prior section 810(d) because reserves must be recomputed for both beginning and end of year); Rev. Rul. 78-354, 1978-2 C.B. 190 (election of a life insurance company to recompute life insurance reserves under prior section 818(c) is terminated when company fails to qualify as a life insurance company and the required recomputation of the reserves is a change in basis of computing the reserves subject to the 10 year spread of prior section 810(d); method of nonlife insurance company taking 10 year spread into account is shown); Rev. Rul. 77-198, 1977-1 C.B. 190 (recomputation of certain reserves from a nonactuarial method to a method utilizing recognized mortality tables and assumed rates of interest is a change in basis of computing reserves under prior sections 806(b) and 810(d)); Rev. Rul. 75-308, 1975-2 C.B. 264 (change in basis

of computing reserves under prior section 810(d) occurs when the addition to the reserve is made, not when the company adopts the policy to change the basis of computing reserves); Rev. Rul. 74-57, 1974-1 C.B. 163 (life insurance company that changes basis of computing reserves must take into account the entire adjustment under prior section 810(d) in the year of change if it ceases to qualify as a life insurance company in the year after the year of change); Rev. Rul. 70-568, 1970-2 C.B. 140 (recomputation of reserves under prior section 818(c) applies to contracts at beginning of year even if they are not held at end of year; prior section 810(d) does not apply to the recomputation); Rev. Rul. 70-192, 1970-1 C.B. 153 (change in assumption of when in year death benefits would be paid is a change in basis of computing reserves under prior sections 806(b) and 810 (d)); Rev. Rul. 69-444, 1969-2 C.B. 145 (an increase in life insurance reserves attributable solely to the addition of a new benefit on existing contracts is not a change in basis of computing reserves under prior sections 806(b) and 810(d)); Rev. Rul. 65-240, 1965-2 C.B. 236 (a nonlife company's change in basis of computing life insurance reserves is a change in basis of computing reserves under prior section 810(d) and is subject to the 10 year spread); Rev. Rul. 65-233, 1965-2 C.B. 228 (prior sections 806(b) and 810(d) apply in the year of a change in basis of computing reserves notwithstanding that state regulatory approval for change was not received until the following year); and Rev. Rul. 65-143, 1965-1 C.B. 261 (change in method of computing life insurance reserves from a preliminary term basis to a net level premium basis is a change in basis of computing reserves under prior sections 806(b) and 810(d); election under prior section 818(c) does not apply to life insurance contracts

that are computed for statutory purposes on a net level premium basis at the end of the year of election).

d. Nonlife insurance companies

Section 832(b)(4) requires a nonlife insurance company to include life insurance reserves, as defined in section 816(b) and determined under section 807, in its determination of premiums earned on insurance contracts during the taxable year, which is a component of underwriting income. Section 807(f) provides rules for changing the basis for determining any item referred to in section 807(c), and life insurance reserves are referred to in section 807(c)(1). Nonlife insurance companies are required to follow the requirements in section 807(f) to change the basis of computing life insurance reserves. Rev. Rul. 65-240.

2. Modification by the TCJA

Section 13513 of the TCJA amended prior section 807(f) to provide that any difference between the amount of an item referred to in section 807(c) as of the close of the taxable year computed on a new basis and the amount of such item as of the close of the taxable year computed on the old basis, as is attributable to contracts issued before the taxable year, is to be taken into account under section 481 as adjustments attributable to a change in method of accounting initiated by the taxpayer and made with the consent of the Secretary.

Section 811(a), which was not amended by the TCJA, generally provides that computations made for the determination of Federal income taxes imposed by the provisions of subchapter L of chapter 1 of the Code (subchapter L) that are set forth in part I shall be made under an accrual method of accounting or, to the extent permitted

under regulations, under a combination of an accrual method and any other permitted method. To the extent not inconsistent with the preceding sentence or any other provision in part I of subchapter L, these computations are to be made in a manner consistent with the manner required for the annual statement approved by the NAIC. Section 811(a) does not affect the application of section 446(e), which generally requires a taxpayer to secure the consent of the Secretary before changing the method of computing the taxpayer's taxable income. See also §1.446-1(e).

After the amendment of section 807(f) by the TCJA, a life insurance company must follow the regular administrative procedures for a change in method of accounting for a change in basis of computing reserves referred to in section 807(c). See, e.g., §1.446-1(e); Rev. Proc. 2015-13, 2015-5 I.R.B. 419, Rev. Proc. 2019-43, 2019-48 I.R.B. 1107; Rev. Proc. 2002-18, 2002-1 C.B. 678. Similarly, a nonlife insurance company must follow the administrative procedures for a change in method of accounting to change its basis of computing life insurance reserves (as defined in section 816(b)).

The Conference Report explained that under the amended law “[i]ncome or loss [sic] resulting from a change in method of computing life insurance company reserves is taken into account consistent with IRS procedures, generally ratably over a four-year period, instead of over a 10-year period.” Conference Report at 467. The Joint Committee on Taxation explained that a company that makes a change in method of computing life insurance company reserves is required to report and file such statements and other information as the Secretary requires under the IRS procedures for accounting method changes, including the procedures for obtaining automatic consent to change an accounting method. Bluebook at 228.

Rev. Proc. 2015-13 provides the IRS procedures for a taxpayer to obtain the advance (non-automatic) or automatic consent of the Commissioner to change a method of accounting. These procedures generally require a taxpayer to file a Form 3115, "Application for Change in Accounting Method," to change the taxpayer's method of accounting. Rev. Proc. 2019-10, 2019-02 I.R.B. 296, modified the list of automatic accounting method changes in Rev. Proc. 2018-31, 2018-22 I.R.B. 637, to add section 26.04, which provided procedures for an insurance company to obtain automatic consent of the Commissioner to change its method of accounting to comply with section 807(f) for taxable years beginning after December 31, 2017. In response to comments, section 26.04 of Rev. Proc. 2018-31 was modified and superseded by Rev. Proc. 2019-43. See section 26.04 of Rev. Proc. 2019-43 for the current procedures for an insurance company to obtain automatic consent of the Commissioner to change its method of accounting to comply with section 807(f). Rev. Proc. 2019-10 also modified Rev. Rul. 94-74 and Rev. Rul. 2002-6 to the extent their holdings are inconsistent with the general rules for changing a method of accounting under section 446(e) and §1.446-1(e). Rev. Proc. 2002-18 provides the IRS procedures for changes in method of accounting imposed by the IRS and other procedures for resolving accounting method issues.

#### E. Reporting of Reserves

Section 13517 of the TCJA added section 807(e)(6), which provides that the Secretary shall require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening and closing balance of reserves and with respect to the method of computing reserves for purposes of determining income.



The Conference Report states that for this purpose the Secretary may require a life insurance company (including an affiliated group filing a consolidated return that includes a life insurance company) to report each of the line item elements of each separate account by combining them with such items from other separate accounts and the general account and report the combined amounts on a line-by-line basis. The Secretary may also provide that the reporting on a separate account by separate account basis is generally not permitted. The Conference Report further states that under existing regulatory authority, the Secretary may require e-filing or comparable filing of the returns and may require that the taxpayer provide its annual statement via a link, electronic copy, or other similar means. Conference Report at 478-79.

F. Annual Statements and Electronically Filed Forms 1120-L and 1120-PC

Section 6012(a)(2) generally requires that returns with respect to income taxes must be made by every corporation subject to taxation under subtitle A of the Code. Final regulations under section 6012 related to insurance companies were published in the **Federal Register** (72 FR 32794) on June 14, 2007 (T.D. 9329). Section 1.6012-2(c)(1) provides that a life insurance company must make a return on Form 1120-L, “U.S. Life Insurance Company Income Tax Return,” and, except as provided in §1.6012-2(c)(4), file with its return a copy of its annual statement. Similarly, §1.6012-2(c)(2) requires every domestic insurance company other than a life insurance company to make a return on Form 1120-PC, “U.S. Property and Casualty Insurance Company Income Tax Return,” and, except as provided in §1.6012-2(c)(4), file with its return a copy of its annual statement. For these purposes, an annual statement means the annual statement, the form of which is approved by the NAIC, that is filed by an

insurance company for the year with the applicable state regulators or, if the insurance company is not required to file the NAIC annual statement, a pro forma annual statement. Section 1.6012-2(c)(3) generally provides that the requirements of §1.6012-2(c)(1) and (2) concerning returns and annual statements also apply to foreign insurance companies subject to tax under section 801 or section 831.

Section 1.6012-2(c)(4) provides that if an insurance company described in §1.6012-2(c)(1), (2), or (3) files its return electronically, it should not include its annual statement with such return but that such statement (or pro forma annual statement) must be available at all times to the IRS.

## **Explanation of Provisions**

### **A. Computation of Life Insurance Reserves**

Section 1.807-1(a) of the proposed regulations provides that no asset adequacy reserve may be included in the determination of the amount of life insurance reserves under section 807(d). This proposed regulation is consistent with the law both before and after the TCJA. The substantive rules in current §1.807-1 have no application for taxable years beginning after December 31, 2017, and therefore, are not included in §1.807-1 of the proposed regulations.

### **B. Reporting of Reserves**

Section 1.807-3 of the proposed regulations allows the IRS to require information necessary for the proper reporting of items described in section 807(c), including separate account items. This provision is consistent with section 807(e)(6), as added by the TCJA.

### **C. Change in Basis of Computing Reserves**

## 1. Proposed Section 1.807-4

Section 1.807-4 of the proposed regulations provides guidance relating to both the change in basis of computing reserves of a life insurance company and the change in basis of computing life insurance reserves of a nonlife insurance company. Section 1.807-4(a) of the proposed regulations requires an insurance company to follow administrative procedures prescribed by the Commissioner to change the basis of computing reserves. This requirement is consistent with the Conference Report relating to section 13513 of the TCJA, which provides that a taxpayer is required to follow IRS procedures. Conference Report at 467; see also Bluebook at 228 (a company is required to comply with procedures for automatic method changes and to report and file statements and other information as the Secretary requires).

Section 1.807-4(b) of the proposed regulations provides that, to avoid the double counting of income or a deduction, a taxpayer that changes its basis of computing reserves is required to take into account under section 481(a) an adjustment attributable to the change in basis. The proposed regulations provide that if a taxpayer loses its insurance company status, then any remaining balance of a section 481(a) adjustment must be taken into account in the last taxable year the taxpayer was an insurance company. This proposed rule, however, would not require an insurance company to accelerate the accounting for such adjustment if it changes from a life insurance company to a nonlife insurance company or vice versa.

Section 1.807-4(c) of the proposed regulations provides that for purposes of determining any increase or decrease in items described in section 807(c) (for a life insurance company) or the amount of life insurance reserves (for a nonlife insurance

company), the determination should be made for the year of change using the old basis of computing reserves and should be made in the following taxable year using the new basis of computing reserves.

Certain revenue rulings are inconsistent with section 807(f), as amended by the TCJA. Accordingly, these revenue rulings are proposed to be obsoleted for taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. See Effect on Other Documents.

## 2. Procedure for Obtaining Automatic Consent

Section 26.04 of Rev. Proc. 2019-43 provides the current procedures for an insurance company to obtain automatic consent of the Commissioner to change its method of accounting to comply with section 807(f). In response to comments, the Treasury Department and the IRS intend to revise section 26.04 of Rev. Proc. 2019-43 as described in the following paragraphs.

First, section 26.04(2)(b)(ii) of Rev. Proc. 2019-43 provides that multiple changes during the same taxable year for the same type of contract are considered a single change in basis and the effects of such changes are netted and treated as a single section 481(a) adjustment. Section 807(f)(1), however, provides that the section 481(a) adjustment is the difference between the amount of any item referred to in section 807(c) computed on the new basis and the amount of such item computed on the old basis. Accordingly, the Treasury Department and the IRS intend to revise section 26.04 of Rev. Proc. 2019-43 to require netting of the section 481(a) adjustments at the level of

each item referred to in section 807(c) so there is a single section 481(a) adjustment for each of the items referred to in section 807(c).

Second, section 26.04(1) of Rev. Proc. 2019-43 provides that the automatic change procedures apply to a nonlife insurance company. The Treasury Department and the IRS intend to revise section 26.04 of Rev. Proc. 2019-43 to clarify the manner in which nonlife insurance companies implement changes to the basis of computing life insurance reserves (as defined in section 816(b)) during a taxable year (year of change). Specifically, the clarification would provide that, if a nonlife insurance company changes the basis of computing its life insurance reserves, then for purposes of applying section 832(b)(4), (i) for the year of change, life insurance reserves at the end of the year of change with respect to contracts issued before the year of change are determined on the old basis and (ii) for the year following the year of change, life insurance reserves at the end of the preceding taxable year with respect to contracts issued before the year of change are determined on the new basis. Life insurance reserves attributable to contracts issued during the year of change and thereafter must be computed on the new basis.

#### D. Definition of Life Insurance Reserves

The TCJA modified section 807(d) to provide that, for purposes of part I of subchapter L (other than section 816), the amount of life insurance reserves for any contract (other than a variable contract) is the greater of the net surrender value of such contract or 92.81 percent of the reserve determined under the applicable tax reserve method. For any variable contract, the amount of the life insurance reserve is the sum of (i) the greater of the net surrender value of such contract or the portion of the reserve

that is separately accounted for under section 817 and (ii) 92.81 percent of the excess (if any) of the reserve determined under the applicable tax reserve method over the amount in clause (i).

Section 807(d)(3) provides that the applicable tax reserve method is CRVM in the case of a contract covered by CRVM and CARVM in the case of a contract covered by CARVM. The CRVM and CARVM may be PBR methods, which may be gross premium reserves and may take into account certain expenses and other factors. Congress understood that for this purpose life insurance reserves could be determined using PBR methods. The Joint Committee on Taxation described the purpose of the TCJA's amendments to section 807(d) as "accommodat[ing] the NAIC-prescribed principle-based reserve methodology." Bluebook at 235.

Section 807(c)(1), however, provides that the reserves referred to in sections 807(a) and (b), which are the reserves taken into account in determining the gross income or deductions of a life insurance company, are "life insurance reserves (as defined in section 816(b))."

Section 816(b) generally defines life insurance reserves to be amounts that are (i) computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, (ii) set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts involving, at the time with respect to which the reserves are computed, life, accident, or health contingencies, and (iii) with some exceptions, required by law. Section 816(b) (and its predecessor provisions) have been interpreted as describing a net premium reserve that does not

take into account expenses or certain other factors. See, e.g., Rev. Rul. 77-451, 1977-2 C.B. 224; Maryland Casualty Co. v. United States, 251 U.S. 342 (1920).

Thus, although Congress intended that the tax reserve method used to compute life insurance reserves under section 807(d), as amended by the TCJA, could include PBR methods, section 816(b) (by virtue of the reference in section 807(c)(1)) could be interpreted to preclude reserves determined under PBR methods from qualifying as life insurance reserves for purposes of section 807. To clarify the interaction between sections 807 and 816, §1.816-1 of the proposed regulations provides that a reserve that meets the requirements in sections 816(b)(1) and (2) will not be disqualified as a life insurance reserve if it is determined using a method that takes into account other factors, provided that the method used to compute the reserves is a “tax reserve method” as defined in section 807(d)(3). This definition would apply to life insurance reserves taken into account by nonlife insurance companies under section 832(b)(4) and for purposes of determining an insurance company’s qualification as a life insurance company under section 816.

#### E. Electronic Filing of Annual Statements

The Conference Report contemplates requiring the electronic filing of annual statements to improve reporting of insurance reserves, as necessary to carry out and enforce section 807. Conference Report at 478-79. The Treasury Department and the IRS believe that requiring an insurance company to file its annual statement electronically (if the company’s Form 1120-L or Form 1120-PC is also filed electronically) is necessary to allow the IRS to better and more efficiently examine the return. Accordingly, §1.6012-2(c) is proposed to be amended to remove the rule that

prohibits an insurance company that files its Form 1120-L or Form 1120-PC electronically from filing its annual statement (or pro forma annual statement) electronically. The Treasury Department and the IRS request comments regarding potential issues that may arise in filing the annual statement (or pro forma annual statements) electronically (for example, if the size of the annual statement(s) may exceed or cause the filed return to exceed the size limits in section 2.1.2 (Submission Size) of IRS Publication 4164, *Modernized e-File (MeF) Guide for Software Developers and Transmitters, Processing Year 2020*.)

F. Proposed Removal or Revision of Regulations with No Future Application.

1. In general

This notice of proposed rulemaking proposes to remove §§1.801-7, 1.801-8(e), 1.806-4, 1.809-2, 1.810-3, 1.818-2(c), and 1.818-4 because these provisions provide guidance under law that has been repealed or substantially changed and will have no application after the adoption of the proposed regulations as final. Section 1.801-5(c) is proposed to be removed because its requirement that a taxpayer file certain information when it changes the basis of computing life insurance reserve is obviated by the requirement in §1.807-4(b) of the proposed regulations that a taxpayer changing the basis of computing any item referred to in section 807(c) follow the administrative procedures prescribed by the Commissioner.

This notice of proposed rulemaking proposes to revise §301.9100-6T to remove provisions related to elections under law that has been repealed or elections that may no longer be made.

2. Section 1.381(c)(22)-1



This notice of proposed rulemaking proposes to remove §1.381(c)(22)-1(b)(6) because its requirement that an acquiring corporation take into account any net increases or net decreases in reserves of the distributor or transferor corporation under section 810(d)(1) is no longer applicable. The principle in §1.381(c)(22)-1(b)(6), however, applies to transactions in which the distributor or transferor corporation has any remaining portion of an adjustment that was required to be taken into account over 10 years under prior section 807(f). See section 2.08 of Rev. Proc. 2019-10. After the amendment of section 807(f) by the TCJA, an acquiring corporation must take into account any remaining section 481(a) adjustment of the transferor or distributor corporation pursuant to the IRS's administrative procedures. See section 7.03 of Rev. Proc. 2015-13.

### 3. Section 1.817A-1

This notice of proposed rulemaking proposes to revise §1.817A-1 to remove the requirement that the current market rate of interest prescribed in §1.817A-1(a)(5) be used to determine both the life insurance reserve and the required interest (as provided in prior section 812(b)(2)(A)) during the temporary guarantee period of a non-equity indexed modified guaranteed contract (MGC).

Prior to its amendment by the TCJA, section 807(d) generally provided that life insurance reserves for a contract were determined using a rate of interest applicable when the contract was issued. Prior section 807(d)(2)(B) provided that the rate of interest to be used was the greater of the applicable Federal interest rate or the prevailing State assumed interest rate. The TCJA amended section 807(d), however, to provide that life insurance reserves for a contract are generally computed using a

method applicable to the contract and in effect as of the date the reserve is determined. Section 807(d), as amended, does not prescribe a particular interest rate to be used in determining life insurance reserves. Thus, the requirement in §1.817A-1(b)(2) that the applicable interest rate to be used under section 807(d)(2)(B) to compute life insurance reserves for an MGC is a prescribed current market interest rate is now inapplicable. Additionally, the need for §1.817A-1(b)(1) to prescribe a current market interest rate to determine life insurance reserves for MGCs (as opposed to an interest rate applicable when the contract was issued) is no longer present because section 807(d), as amended, requires the use of a method in effect as of the date the reserve is determined.

Prior to its amendment by the TCJA, section 812 determined “company’s share” and “policyholder’s share,” in part, by reference to required interest on certain reserves under section 807(c). Prior section 812(b)(2)(A) provided that the required interest was computed at the greater of the prevailing State assumed rate or the applicable Federal interest rate. The TCJA amended section 812 to provide that the “company’s share” means 70% and the “policyholder’s share” means 30%. Accordingly, after the TCJA’s amendment of section 812, a particular interest rate is no longer needed to determine the “company’s share” and the “policyholder’s share.”

Section 1.817A-1 also requires that the current market rate of interest prescribed in §1.817A-1(a)(5) be used to determine reserves under section 807(c)(3) for an MGC during any temporary guarantee period. Prior to amendment of section 807(c), the “appropriate rate of interest” that was otherwise required to determine reserves for MGCs under section 807(c)(3) (the highest of the applicable Federal interest rate, the

prevailing State assumed interest rate, or the interest rate assumed by the company in determining the guaranteed benefit) was determined when the obligation first did not involve life, accident, or health contingencies, and was thus not necessarily a current interest rate. The TCJA, however, modified the flush language in section 807(c)(3) to provide that the “appropriate rate of interest” is the highest rate or rates permitted to be used to discount the obligations by the NAIC as of the date the reserve is determined. Because the interest rate now required to be used to determine reserves under section 807(c)(3) (in the absence of the application of §1.817A-1) is a current market interest rate, §1.817A-1 may no longer be needed to provide a current interest rate. The Treasury Department and the IRS request comments on whether the current market rate of interest prescribed by §1.817A-1 should continue to apply to reserves under section 807(c)(3) for an MGC during any temporary guarantee period.

#### 4. Section 1.338-11

This notice of proposed rulemaking proposes to revise §1.338-11(d)(2) to reflect the change in section 807(f) made by the TCJA. Section 1.338-11(d) generally provides that when a section 338 election is made for an insurance company, new target must effectively capitalize its subsequent increase in reserves for any acquired contracts in the deemed asset sale to the extent the fair market value of certain assets acquired by new target in the deemed asset sale exceeds the adjusted grossed-up basis (AGUB) allocated to those assets (that is, to the extent of a “bargain purchase”). In the absence of this rule, new target could obtain a better tax result if it acquired understated reserves and subsequently increased them rather than acquiring adequately stated reserves.

Section 1.338-11(d) was intended to minimize incentives for sellers to defer

increases in reserves. See T.D. 9257 (71 FR 17990). An exception to §1.338-11(d), however, is provided if new target is required by section 807(f) to spread the reserve increase over the 10 succeeding taxable years. See §1.338-11(d)(2)(ii). There was limited incentive for sellers to defer increases in reserves when new target was required to spread the deduction resulting from the reserve increase over 10 years, as was the case under section 807(f) prior to its amendment by the TCJA. The amendment to section 807(f) by the TCJA together with the applicable administrative procedures require a deduction resulting from a reserve increase under section 807(f) to be taken into account in one year. As a result, there is greater incentive for a seller to defer increases in reserves if new target would be allowed to take the deduction into account in one year, and the reason for providing the exception currently in §1.338-11(d)(2)(ii) no longer exists. Accordingly, this notice of proposed rulemaking proposes to remove the exception for reserve increases under section 807(f) that is currently provided in §1.338-11(d)(2)(ii).

A new §1.338-11(d)(3)(iii) is also proposed to be added so the standard used for determining when there is an additional premium under §1.338-11(d)(3) for a change in items referenced in section 807(c) is the same as that used under section 807(f). Changes in PBRs that are contemplated by the applicable method, for example, may not constitute changes in the basis of computing reserves under section 807(f) and should not result in an amount of additional premium under §1.338-11(d)(3).

#### G. Proposed Conforming Changes to Regulations.

This notice of proposed rulemaking proposes to revise §§1.801-2, 1.809-5, and 1.848-1 to correct references to Code provisions or regulations that have been

changed, removed, or are proposed to be removed by this notice of proposed rulemaking.

### **Determination of Life Insurance or Annuity Contract Status for Certain Foreign-Issued Contracts**

The Code contains a statutory definition of a life insurance contract under section 7702, rules applicable to certain flexible premium contracts under section 101(f), distribution on death requirements under section 72(s), and diversification requirements under section 817(h). These requirements, which reflect Congress's concern that the tax-favored treatment generally accorded life insurance and annuity contracts was available to contracts that were too investment oriented or provided for undue tax deferral, are relevant to the tax treatment of a policyholder, annuitant, or beneficiary as well as the entity that issues or reinsures a life insurance or annuity contract.

The Treasury Department and IRS received a request to promulgate regulations under section 807 that generally would provide, for purposes of subchapter L, that the determination of whether a contract issued by a non-United States insurance company and reinsured by a United States insurance company is a life insurance or annuity contract is made without regard to these statutory requirements, provided that (i) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person and (ii) such contract is regulated as a life insurance or annuity contract by a foreign regulator. Under the requested approach, a United States insurance company may be able to establish additional life insurance or other tax reserves for such a contract that is reinsured by a United States insurance company even if the contract does not meet these statutory requirements.

The Treasury Department and the IRS are evaluating this request, including whether to address it as part of this rulemaking. Comments are requested generally in respect of the requested change, including in respect of statutory interpretation and implications in various contexts and provisions outside of subchapter L, such as, for example, the interaction with policies underlying the Federal withholding tax provisions that could apply to reinsurance payments from a United States reinsurer to a non-United States insurer as well as the administrability of requiring a United States reinsurance company to track the residence of direct and indirect beneficial owners of any interest in the contract, policyholder, insured, annuitant, or beneficiary of a contract issued by a non-United States insurance company that it may not administer.

### **Proposed Applicability Dates**

The rules in this notice of proposed rulemaking are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

A taxpayer may choose to apply §§1.807-4, 1.816-1, and 1.817A-1(b) of the final regulations to taxable years beginning after December 31, 2017, the effective date of the revision of section 807 made by the TCJA, and ending before the first taxable year that begins on or after the date of publication of the Treasury decision adopting these rules as final in the **Federal Register**. See section 7805(b)(7). Alternatively, a taxpayer may rely on §§1.807-4 and 1.816-1 of the proposed regulations for taxable years beginning after December 31, 2017, and ending before the first taxable year that begins on or after the date of publication of the Treasury decision adopting these rules as final in the **Federal Register**.

Under proposed §1.6012-2(l), taxpayers may choose to apply §1.6012-2(c) of the final regulations to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after the date of publication of the Treasury decision adopting these rules as final in the **Federal Register**.

### **Effect on Other Documents**

The following revenue rulings are proposed to be obsoleted for taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**: Rev. Rul. 2002-6, Rev. Rul. 94-74, Rev. Rul. 80-117, Rev. Rul. 80-116, Rev. Rul. 78-354, Rev. Rul. 77-198, Rev. Rul. 75-308, Rev. Rul. 74-57, Rev. Rul. 70-568, Rev. Rul. 70-192, Rev. Rul. 69-444, Rev. Rul. 65-240, Rev. Rul. 65-233, Rev. Rul. 65-143. Comments are requested regarding principles contained within these revenue rulings that are consistent with current section 807(f) and for which additional guidance is needed if these rulings are obsoleted.

Notice 2010-29 is proposed to be obsoleted for taxable years beginning after December 31, 2017.

### **Special Analyses**

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

### **Paperwork Reduction Act**

The collection of information relating to this notice of proposed rulemaking will be submitted to the Office of Management and Budget for review under OMB Control Number 1545-0123 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

In response to the Conference Report, §1.6012-2 of the proposed regulations would require an insurance company to include the insurance company's annual statement (as defined in §1.6012-2(c)(5)) with an electronically filed Federal income tax return (Form 1120-L for a life insurance company and Form 1120-PC for a nonlife insurance company). Federal income tax items of an insurance company are determined in part based upon the insurance company's annual statement. Providing the annual statement to the IRS with an electronically filed Federal income tax return is necessary to allow the IRS to better and more efficiently examine an insurance company's Federal income tax return.

In accordance with section 807(e)(6), as added by the TCJA, §1.807-3 of the proposed regulations provides that the IRS may require reporting on Form 1120-L of the opening balance and closing balance of items described in section 807(c) (for example, life insurance reserves) and the method of computing such items for purposes of determining income. Providing this information is necessary to allow the IRS to better examine an insurance company's Federal income tax return.

For purposes of the Paperwork Reduction Act, the burden for the collection of information associated with §1.6012-2 of the proposed regulations will be reflected in the burden on the Form 1120-L and in the burden on the Form 1120-PC (OMB Control Number 1545-0123) when the burden for each is revised to reflect the collection of



information associated with §1.6012-2 of the proposed regulations. The respondents to the collection of information are life insurance companies that file the Form 1120-L electronically and nonlife insurance companies that file the Form 1120-PC electronically.

For purposes of the Paperwork Reduction Act, the burden for the collection of information associated with §1.807-3 of the proposed regulations will be reflected in the burden on the Form 1120-L (OMB Control Number 1545-0123) when the burden is revised to reflect the collection of information associated with §1.807-3 of the proposed regulations. The respondents to the collection of information are life insurance companies that file a Form 1120-L.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be

minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

#### Regulatory Flexibility Act

It is hereby certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Section 13517 of the TCJA added section 807(e)(6) to the Code. Under section 807(e)(6), the Secretary may require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening balances and the closing balances of reserves and with respect to the method of computing reserves for purposes of determining income. Section 1.807-3 of the proposed regulations would allow the IRS to require the reporting of this information on any prescribed forms, such as the Form 1120-L.

The Conference Report at 478-479 provides that, under existing authority, the Secretary may require an insurance company to provide its annual statement via a link, electronic copy, or other similar means. Section 1.6012-2(c) of the proposed regulations would require an insurance company to include the insurance company's annual statement with an electronically filed Federal income tax return (Form 1120-L for

a life insurance company and Form 1120-PC for a nonlife insurance company). Under current procedures, an insurance company can only electronically file a Form 1120-L or Form 1120-PC if the insurance company is part of an affiliated group filing a consolidated return, the parent of which files a Form 1120. Although data are not readily available, the IRS and the Treasury Department expect that any reporting burden associated with §1.6012-2(c) of the proposed regulations will fall primarily on financial and insurance firms with annual receipts greater than \$41.5 million and, therefore, will not affect a substantial number of small entities. See 13 CFR 121.201, sector 52 (finance and insurance).

As stated in the preceding paragraph, the rule is not expected to affect a substantial number of small entities; however, even if a substantial number of small entities were affected, the economic impact of the regulation is not likely to be significant. Section 1.807-3 of the proposed regulations is limited in scope to time and manner of information reporting, and any economic impact associated with this proposed regulation is expected to be minimal. Further, the information reported to the IRS is information that the insurance company has readily available.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impact this rule would have on small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations,

consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules and the other proposed actions described herein. All comments that are submitted by the public will be available for public inspection and copying at <http://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Such persons should submit a signed paper original and eight (8) copies or an electronic copy. A period of 10 minutes will be allotted to each person for presenting oral comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal author of these regulations is Dan Phillips, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

### **Statement of Availability of IRS Documents**

The IRS notices, revenue procedures, and revenue rulings cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

## **List of Subjects**

### **26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **26 CFR Part 301**

Employment taxes, Estate taxes, Excise Taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

## **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding a sectional authority for §1.807-3 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

\* \* \* \* \*

Section 1.807-3 also issued under 26 U.S.C. 807(e)(6).

\* \* \* \* \*

### **§1.338-11 [Amended]**

Par. 2. Section 1.338-11 is amended by:

1. Revising paragraph (d)(2).
2. Removing the language “and (d)(3)(iii)” from the first sentence in paragraph

(d)(3)(i) and adding “through (iv)” in its place.

3. Redesignating paragraph (d)(3)(iii) as paragraph (d)(3)(iv).
4. Adding a new paragraph (d)(3)(iii).
5. Revising newly redesignated paragraph (d)(3)(iv).
6. Adding paragraph (d)(7)(iii).

The revisions and additions read as follows:

**§1.338-11 Effect of section 338 election on insurance company targets.**

\* \* \* \* \*

(d) \* \* \*

(2) Exception. New target is not treated as receiving additional premium under paragraph (d)(1) of this section if it is under state receivership as of the close of the taxable year for which the increase in reserves occurs.

(3) \* \* \* \* \*

(iii) Increases in section 807(c) reserves. The positive amounts with respect to the items referred to in section 807(c) other than discounted unpaid loss reserves is the sum of the net increases in such items that are required to be taken into account under section 807(f).

(iv) Increases in other reserves. The positive amount with respect to reserves other than discounted unpaid loss reserves and other items referred to in section 807(c) is the net increase of those reserves due to changes in estimate, methodology, or other assumptions used to compute the reserves (including the adoption by new target of a methodology or assumptions different from those used by old target).

\* \* \* \* \*

(7) \* \* \*

(iii) Application of paragraphs (d)(2) and (3) of this section. Paragraphs (d)(2) and (3) of this section apply to taxable years beginning on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**. For taxable years beginning before such date, see paragraph (d) of this section as contained in 26 CFR part 1 revised as of April 1, 2019.

\* \* \* \* \*

#### **§1.381(c)(22)-1 [Amended]**

Par. 3. In §1.381(c)(22)-1, paragraph (b)(6) is removed and reserved.

#### **§1.801-2 [Amended]**

Par. 4. Section 1.801-2 is amended by removing the language “1.801-7” and adding the language “1.801-6” in its place.

Par. 5. Section 1.801-5 is amended by:

1. Removing paragraph (c) and redesignating paragraph (d) as paragraph (c).
2. In newly redesignated paragraph (c), designating the Example as paragraph (c)(1).
3. In newly designated paragraph (c)(1):
  - i. Designating the introductory text as paragraph (c)(1)(i).
  - ii. Adding a heading for the table in newly designated paragraph (c)(1)(i).
  - iii. Designating the undesignated paragraph following newly designated paragraph (c)(1)(i) as paragraph (c)(1)(ii).
4. Adding reserved paragraph (c)(2).

The addition reads as follows:

#### **§1.801-5 [Amended]**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

Table 1 to Paragraph (c)(1)(i)

\* \* \* \* \*

#### **§1.801-7 [Removed and Reserved]**

Par. 6. Section 1.801-7 is removed and reserved.

#### **§1.801-8(e) [Amended]**

Par. 7. In §1.801-8, paragraph (e) is removed and reserved.

#### **§1.806-4 [Removed]**

Par. 8. Section 1.806-4 is removed.

Par. 9. Section 1.807-1 is revised to read as follows:

#### **§1.807-1 Computation of life insurance reserves.**

(a) No asset adequacy reserve. The life insurance reserve determined under section 807(d)(1) does not include any asset adequacy reserve. An asset adequacy reserve includes any reserve that is established as an additional reserve based upon an analysis of the adequacy of reserves that would otherwise be established or any reserve that is not held with respect to a particular contract. In determining whether a reserve is a life insurance reserve, the label placed on such reserve is not determinative, provided, however, any reserve or portion of a reserve that would have been established pursuant to an asset adequacy analysis required by the National



Association of Insurance Commissioner's Valuation Manual 30 as it existed on December 22, 2017, the date of enactment of Public Law 115-97, is an asset adequacy reserve.

(b) Applicability date. The rules of this section apply to taxable years beginning on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 10. Section 1.807-3 is added to read as follows:

**§1.807-3 Reporting of reserves.**

(a) Reserve reporting. A life insurance company subject to tax under section 801 is required to make a return on Form 1120-L, U.S. Life Insurance Company Income Tax Return. The Internal Revenue Service may require reporting with respect to the opening balance and closing balance of items described in section 807(c) and with respect to the method of computing such items for purposes of determining income. Such reporting may provide for the manner in which separate account items are reported. (See section 6011 and §301.6011-1 of this chapter.)

(b) Applicability date. The rules of this section apply to taxable years beginning on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**.

Par. 11. Section 1.807-4 is added to read as follows:

**§1.807-4 Adjustment for change in computing reserves.**

(a) Requirement to follow administrative procedures. Except as provided in §1.446-1(e), a change in basis of computing an item referred to in section 807(c) is a change in method of accounting for purposes of §1.446-1(e). Before computing such

item under a new basis, a life insurance company must obtain the consent of the Commissioner of Internal Revenue or his delegate (Commissioner) pursuant to administrative procedures prescribed by the Commissioner. Similarly, an insurance company other than a life insurance company (a nonlife insurance company) that changes its basis of computing life insurance reserves must obtain the consent of the Commissioner pursuant to administrative procedures prescribed by the Commissioner.

(b) Section 481 adjustment--(1) In general. If the basis of computing any item referred to in section 807(c) as of the close of any taxable year (the year of change) differs from the basis of computing such item at the close of the preceding taxable year, then the difference between the amount of the item at the close of the taxable year computed on the new basis and the amount of the item at the close of the taxable year computed on the old basis that is attributable to contracts issued before the taxable year, is taken into account under section 481 and §§1.481-1 through 1.481-5 as an adjustment attributable to a change in method of accounting.

(2) Loss of company status. If for any taxable year a taxpayer that was an insurance company for the year of change is no longer an insurance company, then the taxpayer must take into account in the preceding taxable year (that is, the last taxable year it was an insurance company) the balance of any section 481(a) adjustment determined under paragraph (b)(1) of this section. A taxpayer that was an insurance company for the year of change does not accelerate the balance of any section 481(a) adjustment determined under paragraph (b)(1) of this section merely because it changes from a life insurance company to a nonlife insurance company or because it changes from a nonlife insurance company to a life insurance company.

(c) Effect on determining increase or decrease in reserves--(1) Effect under section 807(a) and (b). If there is a change in basis of computing any item described in section 807(c) for a taxable year, then, for purposes of section 807(a) and (b), the closing balance for such item for the year of change with respect to contracts issued before the year of change is determined on the old basis and the opening balance for such item for the next taxable year for such contracts is computed on the new basis.

(2) Effect under section 832. The following rules apply for purposes of section 832(b)(4):

(i) For the year of change, life insurance reserves at the end of the year of change with respect to contracts issued before the year of change are determined on the old basis.

(ii) For the taxable year following the year of change, life insurance reserves at the end of the preceding taxable year (that is, the year of change) with respect to contracts issued before the year of change are determined on the new basis.

(d) Examples. The principles of paragraphs (a) through (c) of this section are illustrated by the following examples. For purposes of these examples and except as otherwise provided, IC is a life insurance company within the meaning of section 816(a) that issues life insurance and annuity contracts. IC is required to determine the amount of life insurance reserves under section 807(d) and to take net increases or decreases in the reserves into account in computing life insurance company taxable income. IC's reserve for each insurance contract at issue exceeds the net surrender value for such contract and does not exceed the statutory reserve for such contract. IC uses a calendar year as its taxable year.

(1) Example 1--(i) Facts. In 2021, IC discovered that it had computed the amount of life insurance reserves for its 2019 and 2020 taxable years by using a mortality table that was not permitted by the tax reserve method (as defined in section 807(d)(3)).

(ii) Analysis. To comply with section 807(d), IC must use the appropriate mortality table to compute its life insurance reserves for the 2021 taxable year. This change is a change in basis of computing life insurance reserves and a change in method of accounting described in §1.446-1(e). IC is required to obtain the consent of the Commissioner to change its basis of computing its life insurance reserves by following the administrative procedures prescribed by the Commissioner.

(2) Example 2--(i) Facts. IC issues variable annuity contracts with guaranteed minimum benefits. In Year 1, the National Association of Insurance Commissioners makes a change to the Commissioners' Annuity Reserve Valuation Method that imposes a new computational requirement on issuers of variable annuities with guaranteed minimum benefits. The requirement applies to the determination of statutory reserves as of December 31, Year 1, for contracts issued on or prior to December 31, Year 1.

(ii) Analysis. To comply with section 807(d), IC must compute its life insurance reserves for variable annuities with guaranteed minimum benefits for the Year 1 taxable year using the new computational requirement. This change is a change in basis of computing life insurance reserves for such contracts issued prior to Year 1 and a change in method of accounting described in §1.446-1(e). IC is required to obtain the consent of the Commissioner to change its basis of computing its life insurance reserves by following the administrative procedures prescribed by the Commissioner.

(3) Example 3--(i) Facts. In 2021, IC changed the basis of computing the amount of life insurance reserves for a certain type of life insurance contract as described in section 807(f). Both the basis used for computing the reserves for the relevant contracts at the close of the 2020 taxable year (old basis) and the basis of computing the reserves for the relevant type of contract at the close of the 2021 taxable year (new basis) are consistent with the applicable Commissioners' Reserve Valuation Method. IC followed the administrative procedures prescribed by the Commissioner to obtain consent to change the basis of computing these reserves. IC determined that the life insurance reserves as of December 31, 2021, for the relevant contracts issued prior to 2021 were \$110 if computed using the old method and \$120 if computed using the new method. IC also determined that the life insurance reserves as of December 31, 2021, for the relevant contracts issued during 2021 were \$15 using the new basis.

(ii) Analysis. IC must take into account under section 481 and the administrative procedures prescribed by the Commissioner the \$10 difference between the reserves for the relevant contracts issued prior to 2021 computed under the old basis (\$110) and the reserves for such contracts computed under the new basis (\$120). For purposes of determining any net increase or net decrease in reserves in taxable year 2021 under section 807(a) or (b), IC's closing balance of life insurance reserves computed under

section 807(d) with respect to the relevant contracts is \$110 for contracts issued prior to 2021 (computed on the old basis) and \$15 for contracts issued during 2021 (computed on the new basis). IC's opening balance in 2022 for life insurance reserves for the relevant contracts is \$135 (computed on the new basis).

(4) Example 4--(i) Facts. The facts are the same as in paragraph (d)(3) of this section (the facts in Example 3), except that IC is an insurance company that is not a life insurance company. IC is required to compute taxable income under section 832.

(ii) Analysis. IC must take into account under section 481 and the administrative procedures prescribed by the Commissioner the \$10 difference between the reserves for the relevant contracts issued prior to 2021 computed under the old basis (\$110) and the reserves for such contracts computed under the new basis (\$120). For purposes of determining the premiums earned on insurance contracts during the taxable year as described in section 832(b)(4) for the year of change, the life insurance reserves at the end of the taxable year are \$110 for contracts issued prior to 2021 (computed on the old basis) and \$15 for contracts issued during 2021 (computed on the new basis). For purposes of determining the premiums earned on insurance contracts during the taxable year as described in section 832(b)(4) for the taxable year following the year of change, the life insurance reserves at the end of the preceding taxable year (the year of change) with respect to relevant contracts are \$135 (computed on the new basis).

(e) Applicability date. The rules of this section apply to taxable years beginning on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**. However, a taxpayer may choose to apply the rules of this section for taxable years beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115-97, and ending before the first taxable year that begins on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**. See section 7805(b)(7).

#### **§1.809-2 [Removed]**

Par. 12. Section 1.809-2 is removed.

#### **§1.809-5 [Amended]**

Par. 13. Section 1.809-5 is amended by removing the language “and §1.810-3” from the last sentence of paragraph (a)(5)(iii).

### **§1.810-3 [Removed]**

Par. 14. Section 1.810-3 is removed.

Par. 15. Section 1.816-1 is added before the undesignated center heading “Miscellaneous Provisions” to read as follows:

#### **§1.816-1 Life insurance reserves.**

(a) Definition of life insurance reserves. Except as provided in section 816(h), a reserve that meets the requirements of section 816(b)(1) and (2) will not be disqualified as a life insurance reserve solely because the method used to compute the reserve takes into account other factors, provided that the method used to compute the reserve is a tax reserve method as defined in section 807(d)(3) and that such reserve is not an asset adequacy reserve as described in §1.807-1(a).

(b) Applicability date. The section applies to taxable years beginning on or after

**[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].**

However, a taxpayer may choose to apply the rules of this section for taxable years beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115-97, and ending before the first taxable year that begins on or after

**[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].**

See section 7805(b)(7).

### **§1.817A-0 [Removed]**

Par. 16. Section 1.817A-0 is removed.

Par. 17. Section 1.817A-1 is amended by:

1. Revising the heading to paragraph (b) and paragraph (b)(1).
2. Removing paragraph (b)(2).

3. Redesignating paragraphs (b)(3) and (4) as paragraph (b)(2) and (3).

5. In newly redesignated paragraph (b)(3):

i. Revising the first sentence.

ii. Removing the word “None” in the second sentence and adding “Neither” in its place.

6. Removing paragraph (b)(5)

7. Revising paragraph (d).

The revisions read as follows:

**§1.817A-1 Certain modified guaranteed contracts.**

\* \* \* \* \*

(b) Applicable interest rates for certain non-equity-indexed modified guaranteed contracts--(1) Tax reserves during temporary guarantee period under section 807(c)(3).

An insurance company is required to determine the tax reserves for certain MGCs under section 807(c)(3). During the temporary guarantee period of such an MGC that is a non-equity-indexed MGC, the applicable interest rate to be used is the current market rate, as defined in paragraph (a)(5) of this section. For periods after the end of such a temporary guarantee period, section 807(c)(3) is not modified when applied to a non-equity indexed MGC. Section 807(c)(3) is not affected by the definition of current market rate contained in paragraph (a)(5) of this section once the temporary guarantee period has expired.

\* \* \* \* \*

(3) Periods after the end of the temporary guarantee period. For periods after the end of the temporary guarantee period, sections 807(c)(3) and 811(d) are not

modified when applied to non-equity-indexed MGCs. \* \* \*

\* \* \* \* \*

(d) Applicability dates. Paragraph (b) of this section applies to taxable years beginning on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**. However, a taxpayer may choose to apply the rules of paragraph (b) of this section for taxable years beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115-97, and ending before the first taxable year that begins on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**. See section 7805(b)(7). For taxable years beginning before **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**, see paragraph (b) of this section as contained in 26 CFR part 1 revised as of April 1, 2019.

#### **§1.818-2 [Amended]**

Par. 18. Section 1.818-2 is amended by removing paragraph (c).

#### **§1.818-4 [Removed and Reserved]**

Par. 19. Section 1.818-4 is removed and reserved.

#### **§1.848-1 [Amended]**

Par. 20. Section 1.848-1 is amended by removing the language “section 807(e)(4)” in paragraph (b)(2)(i) and adding the language “section 807(e)(3)” in its place.

Par. 21. Section 1.6012-2 is amended by:

1. In the second sentence of paragraph (c)(1)(i), removing “Except as provided in paragraph (c)(4) of this section, such” and adding “Such” in its place.



2. In the third sentence of paragraph (c)(2), removing “Except as provided in paragraph (c)(4) of this section, such” and adding “Such” in its place.

3. Removing paragraph (c)(4).

4. Redesignating paragraph (c)(5) as paragraph (c)(4).

5. Revising paragraph (l).

The revision reads as follows.

**§1.6012-2 Corporations required to make returns of income.**

\* \* \* \* \*

(l) Applicability date. Except as provided in this paragraph (l), paragraph (c) of this section applies to any taxable year beginning on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**. However, a taxpayer may choose to apply paragraph (c) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**. For taxable years beginning before **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]** see paragraph (c) of this section as contained in 26 CFR part 1 in effect on April 1, 2019.

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 22. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

**§301.9100-6T [Amended]**

Par. 25. Section 301.9100-6T is amended by:

1. Removing from the table in paragraph (a)(1) the three entries for “211” and the entries for “216(c)(1),” “216(c)(2),” “217(i),” and “217(l)(2)(B).”
2. Removing and reserving paragraph (a)(2)(iii).
3. Removing paragraph (a)(3)(v).
4. In paragraph (a)(4):
  - i. Removing “211 (Code section 810(b)(3)), 216(c) (1) and (2), 217(l),” from the first sentence.
  - ii. Removing “211 (Code sections 806(d)(4), and 807(d)(4)(C)), 217(i),” from the second sentence.
  - iii. Removing the last sentence.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

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